No. 72

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IN THE

Supreme Court of the United States

OCTOBER TERM 1932.

RAYMOND J. FUNKHOUSER and ELMER N. FUNKHOUSER, doing business under the firm name and style of R. J. FUNKHOUSER AND CO.,

Appellants,

v.

J. B. PRESTON COMPANY, INC.,

Appellee.

APPELLANTS' REPLY BRIEF

GEORGE LINK, jr.,
Counsel for Appellants,
17 John Street,
New York City.

SUPREME COURT OF THE UNITED STATES

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RAYMOND J. FUNKHOUSER and ELMER N. FUNKHOUSER, doing business under the firm name and style of R. J. FUNKHOUSER AND CO.,

Appellants,

against

J. B. PRESTON COMPANY, INC.,

Appellee.

APPELLANTS' REPLY BRIEF.

The appellee on page 9 of its brief contends that the decision of the Trial Court on the question of the allowance of interest was final. The Appellate Division, duly considering all of the questions raised by the appellants' notice of appeal, reversed the finding of the Trial Court and found that the damages were unliquidated, and as stated in appellants' motion brief the Court of Appeals did not reverse this finding and holding of the Appellate Division.

The common law of the State of New York at the time of the execution of the agreement in question became a part of, and the appellants were secured by, the common law decisions of the State of New York at that time.

In *Henry Muhlker* v. *New York and Harlem R. R. Company,* 197 U. S. 544, 570, the Court stated:

> "* * * When the plaintiff acquired his title, those cases were the law of New York and assured to him

his easements of light and air were secured by contract as expressed in those cases and could not be taken from him without payment of compensation."

Respectfully submitted,

GEORGE LINK, jr.,
Attorney for Appellants.